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200—23-7-96

Legislative (1896) Department.

ORDINARY MS.

G.O., No. 65

DATED 17-8-96

[Despatch Abstract.]

Recording Advocate General's opinion on certain alleged defects in the Malabar Marriage Act with the remark that ~~steps should be~~ Public Dept should take immediate steps for giving effect to the Act.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FORT ST. GEORGE GAZETTE SUPPLEMENT.

TUESDAY EVENING, FEBRUARY 4, 1896.

DIEU ET MON DROIT

Bill introduced into the Council of the Governor of Fort St. George for making Laws and Regulations.

The following Report of the Select Committee on the Bill to provide a form of marriage for persons following the Marumakkatayam or Aliyasantana Law of Inheritance, together with the Bill as amended by the Committee, is published for general information :—

To

THE HONOURABLE THE COUNCIL OF THE GOVERNOR OF
FORT ST. GEORGE FOR MAKING LAWS AND REGULATIONS.

We, the members of the Select Committee appointed at the meeting of Council held on the 4th November 1895 to consider the Bill to provide a form of marriage for persons following the Marumakkatayam or Aliyasantana Law of Inheritance, have the honour to submit our report thereon to the Council.

We have considered papers circulated with the Bill under Council Rule No. 32, the correspondence in G.O., No. 115, Legislative, dated 6th November 1895, and the petitions * relating to the Bill which have been referred to us under Council Rule No. 45.

We have made certain verbal alterations in the preamble and section 1.

Section 2.—We have omitted the term "marriage connection" as inappropriate and have substituted the term "sambandham" which we have defined as an alliance by which a male and a female cohabit according to the custom of the community.

We have defined the word "children" as including the children born before or after the registration of marriage. This renders it unnecessary to retain section 22 of the first Bill.

We have substituted the word "marriage" for the words "marriage connection registered under this Act" and defined the word "marriage" accordingly.

We consider that the word "Tarwad" should be defined so as to include families governed by the Aliyasantana law to which it is not always applied and to comprise only members having community of property. We have accordingly so defined it.

Section 3 (2 *and* 7).—Section 7 of the first Bill left it to the members of the Tarwad of either of the parties and other persons interested to raise objections to the registration of marriage on certain grounds therein specified, and section (13) of that Bill then declared that the marriage should be null and void on the grounds (*a*) that the parties are related within the prohibited degrees, (*b*) that one or both of the parties has a husband or wife living. We consider it desirable to declare first the conditions subject to which alone marriages shall be registered and then to specify

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* Printed in G.O., No. 77, Legislative, dated 24th Aug. 1895.
" " " 117 " " 8th Nov. "
" " " 118 " " 8th " "

the grounds which shall render the marriage absolutely null and void or render registration open to objection. We have accordingly declared by section 3 the conditions subject to which alone marriages shall be registered and by section 15 the grounds which shall render the marriage null and void or the registration open to objection. Thus—(1) Section 15, clause (1), declares that a marriage is absolutely null and void if (*a*) the parties are related within certain prohibited degrees which are the same as in the first Bill, (*b*) either of the parties has a husband or wife living, and (*c*) for another reason not found in the first Bill, which will be presently referred to, but not on any other ground. (2) By sections 8, 9 and 10 registration may be objected to on certain other grounds within a time limited. If the objection is taken within that time and is well founded, the Registrar shall not register; but if no objection is taken to the registration within the time specified the registration shall not be cancelled on any of the said grounds unless notice has not been served on those entitled to object to the registration, in which case section 16, clause (1), enables such persons to get the registration cancelled if they take legal proceedings for that purpose within a specified time after the registration.

We have already stated that the grounds that render a marriage which has been registered null and void are the same as those in the first Bill, with one exception, viz., clause (*a*) of section 3.

One objection to the Bill was that it provides a form of civil marriage for classes of people who have a personal law of marriage and that it enables them to marry in a form not sanctioned by such law. It was contended that in the case of those who have a personal law of marriage, no marriage forbidden by such law should be recognised. It was also urged that this feature of the Bill has not been considered by the Local Government or the Government of India, and that no application has been made to the legislature on behalf of those who have a personal law of marriage for such a provision as is objected to. For these and other reasons, which are set out in detail in the speech of the Hon'ble Mr. Bhashyam Aiyangar (printed at pp. 27—30 of the *Fort St. George Gazette* Supplement, dated 3rd December 1895), it was contended that the provisions which recognise such marriages are unnecessary and inexpedient. Some of the members of the select committee also consider that such sambandhams when formed should not be registered because they are not considered respectable by those to whom this Act will apply and because they are opposed to public policy as they practically enforce celibacy upon certain classes of females. The provisions objected to have been omitted for the reasons on which the members of the committee are agreed, viz., that there has been no demand for legislation by the classes referred to and that this feature of the Bill has not been apparently considered by the Governments of Madras and India. We have therefore provided that if either of the parties has a personal law of marriage which forbids marriage between them the marriage even if registered shall be null and void. The only other material alteration has reference to the age of the parties. We have provided that if the parties have not attained the age of majority their guardians' consent is necessary to registration.

Section 5 (*Sec.* 4).—We have made a slight alteration in this section by which we have empowered the Marriage Registrar of the locality where a sambandham is intended to be formed, to register such sambandham as a marriage. This alteration is necessary in order to provide for those cases where the parties may form a sambandham after the notice is given and before the registration.

In order to obviate the necessity for each consenting party giving notice to the other we have provided for their applying jointly to the Registrar.

Section 7.—To avoid repetition, we have omitted in this, as well as in the other sections where they occur the provision that notices shall be served in the manner provided for in the Civil Procedure Code, and we have inserted a section at the end of the Bill that all notices shall be so served.

Section 8.—Objection has been taken to the term "parties interested" as being too vague and likely to lead to vexatious suits by parties who have really no interest in the marriage. We have therefore limited the power of objection to persons "having any expectancy of succession to the Tarwad property." This provision is wide enough to include all persons who are likely to be affected in any way by the proposed registration of marriage.

Sections $\frac{9,\ 10,\ 11,\ 12,\ 14}{8,\ 9,\ 10,\ 11,\ 12}$.—The alterations are only verbal and intended to make the meaning clear.

Section 13.—This is a new section to enable the Registrar to attend at the private residence of parties, or their guardians, for the purpose of registration.

Section 15.—As one of the conditions that shall make a marriage null and void, we have inserted the provision that neither party must be subject to a law of marriage that disables him or her from contracting a marriage with the other. We have already stated our reasons for adopting this provision.

Section 16.—This section is new. The first Bill does not deal with those cases in which persons entitled to receive notice under Section 7 have not received such notice and were therefore unable to object to the registration of the marriage. This section declares that the registration shall not be invalid on such ground but that persons who have not been served with such notice may take steps within three months to cancel the registration on any of the grounds on which they could have successfully objected to such registration.

Section 17.—We do not consider it desirable to enable the husband in a suit for maintenance in a civil suit to plead the defences open to him in an application for maintenance by the wife under the Code of Criminal Procedure. The grounds referred to in section 488 of this Code were not intended to be availed of in a civil suit. The material grounds referred to in this section are available under the Hindu law. We have accordingly modified the section by omitting all reference to the Criminal Procedure Code.

Section $\frac{18}{15}$.—To avoid any conflict with the provisions of Act VIII of 1890, we have modified the section by providing that the right of guardianship shall be subject to the provisions of that Act. We have also declared that the guardianship shall not extend to the interests of the wife and children in the Tarwad property as it is clear that such a right was not intended to be given to the husband.

Section $\frac{19,\ 20,\ 21}{16,\ 17,\ 18}$.—The section as altered enables the husband and wife to make a joint application for the dissolution of marriage.

Section 22.—This section is new. It enables a wife who is divorced without her consent, and whose divorce is not in consequence of her adultery, to claim maintenance so long as she remains chaste and unmarried. Free divorce must at present be permitted, but we do not see any reason why a wife who is entitled to maintenance from her husband should be deprived of that right through no fault of her own by a capricious exercise of the right of divorce on the part of her husband. In such cases we consider her claim should be preserved. Capricious divorce seems to be rare, and this provision is not therefore likely to be seriously objected to.

Section $\frac{23}{19}$.—Under the first Bill the widow and children of the deceased intestate were to take the half share of the deceased's separate or self-acquired property as if they formed a Tarwad. This provision is unworkable as it ignores those cases where a man leaves (*a*) children by different wives who would be members of different Tarwads, or (*b*) a widow and children by a deceased or divorced wife who similarly would be members of different Tarwads. It is impossible for them to hold property "as if they formed a Tarwad."

We have carefully considered whether it is possible to allow the successors to hold the property devolving on them as members of a "Tavazhi" or branch of the Tarwad to which they belong and we have come to the conclusion that this is impracticable. A "Tavazhi" in its restricted sense consists of a mother and all her issue in the female line. If the widow and children take the property of the deceased intestate as a "Tavazhi," then in case such widow has other children not born to the deceased husband, such children also are regarded as members of such "Tavazhi" and thus they become entitled to the property of the deceased. We do not consider it desirable that the children of the mother (*a*) by a person other than the deceased husband (*b*) born of a union not registered under this Act or (*c*) born of concubinage (all of whom are members of the "Tavazhi") should be entitled to the property of the deceased.

If on the other hand it be declared that the "Tavazhi" shall consist of the widow and her children by her deceased husband alone, and shall not include any other children she may have, there are other grave difficulties.

If she re-marries, she and her children by the second husband would inherit his property as a "Tavazhi" although she is already the member of a "Tavazhi"

consisting of herself and her children by the first husband. She cannot be a member of two Tavazhis or branches.

Further, the constitution of such a "Tavazhi" by separating the mother from some of her children is totally repugnant to the notions of those who follow the Marumakkatayam law or usage which regards all the children of one mother as members of one "Tavazhi" with their mother. The Marumakkatayam system does not recognize the offspring of a male ancestor as constituting a "Tavazhi."

When a female member of a "Tavazhi" or branch marries, under the Act, she will become the head of another branch. The result will be the creation of numerous "Tavazhis" within "Tavazhis" (branches within branches) leading to great complications unknown and repugnant to the Marumakkatayam system.

We have therefore declared that the property of the intestate shall devolve upon his widow and children as their own property absolutely and in equal shares. In the absence of a Tarwad, we have provided for the widow and children taking the entire property.

Section $\frac{24}{20}$.—As the property of the deceased husband is to devolve upon his heirs as their own property, it is obviously undesirable that the property of the deceased wife should devolve subject to different incidents. We have therefore modified this section to bring it in conformity to section 23.

Section 21 of the first Bill is unnecessary.

Section 22 of the first Bill may be omitted as we have defined the word "children" to include children born before registration.

Section 23 is, we consider, superfluous.

	(Signed)	C. SANKARAN NAIR.
	(,,)	J. H. SPRING BRANSON.
	(,,)	V. BHASHYAM IYENGAR.
	(,,)	J. STURROCK.
	(,,)	P RUNGIAH NAIDOO.
	(,,)	C. VIJIARAGHAVACHARY.
3rd February 1896.	(,,)	C. JAMBULINGAM MUDALIYAR.

MINUTE OF DISSENT.

I regret my inability to subscribe my consent fully to the Bill as revised by the Select Committee.

An important change has been effected in the Bill since its reference to the committee in consequence of the views expressed by the Hon'ble Mr. V. Bashyam Iyangar at the introduction of the Bill. *Clause* (*a*) *in sections 3 and 15* is the new provision.

In *section 3* this provision prevents the registration of a Sambandham and acts as a condition precedent to registration. Under subsequent provisions objection may be taken, by certain persons interested, on this or any of the five more conditions detailed in the section, and if no objection is taken within certain prescribed periods, or if the objection taken is disallowed by a Court of Justice after trial, the Sambandham is registered. To this extent I approve the retention of condition (*a*) *in section 3*, though not on the particular grounds stated in the report of the Select Committee.

The same condition (*a*) is repeated *in section 15* as one of the grounds for rendering a duly registered marriage null and void, and I do not agree to this. I give below some of the reasons which have induced me to adopt this position:—

(1) There is no reason for a marriage duly completed without objection becoming null and void on this ground.

(2) It is classed with incestuous connections and bigamy for the purpose of invalidating marriages. I do not consider it approaches these, in any way, in gravity and importance.

(3) If people prefer their immemorial social usages to what is said to be their personal law, it is not for the State to force them to abide by a law which they do not respect.

(4) I adhere to the views of Sir Muthusamy Iyer contained in paragraph 16 (II) and (III) of his memorandum and I consider them to be the only sound basis for social legislation. Society cannot be "fossilized" into any particular state, and it must have freedom to develop itself in all harmless directions. The retention of condition (*a*) *in section 3* and its omission in *section 15* admirably carry out this purpose.

(5) Four of the members of the Marriage Commission, the President of the Commission, and the Governments of Madras and India have all recognized the need for admitting the existing social usages as marriages and permitting their registration if the parties choose. Even in section 3, condition (*a*), which permits people to plead a personal law in bar of registration, though they are following a different social usage and have no respect for that law, is an undesirable provision. But I allow it only on grounds of expediency for the present. The further invocation of personal law, under such circumstances, to render such marriages null and void, is injudicious.

(6) The retention of condition (*a*) in section 15 amounts to a legislative recognition of concubinage in certain classes; and in its practical working and ultimate effects it will violate all principles of morality and natural justice.

The above are some of my reasons. I would therefore object to *clause* (*a*) *in section 15* of the Bill.

C. JAMBULINGAM MUDALIYAR.

2nd February 1896.

No. 1 OF 1895.

The Malabar Marriage Bill.

(As amended by the Select Committee.)

Whereas it is expedient to enable persons following the Marumakkatayam or the Aliyasantana Law of Inheritance to contract marriages which shall be recognized by courts of law as legal marriages and to provide for the issue of such marriages; It is hereby enacted as follows :—

1. This Act *may be called "the Malabar Marriage Act, 1896," and it* shall be applicable to all Hindus in the Presidency of Madras following the Marumakkatayam or the Aliyasantana Law of Inheritance.

2. *In this Act unless there is something repugnant in the subject or context :*

"Sambandham" means the formation of an alliance between a male and a female by reason of which alliance they, in accordance with the custom of the community to which both or either of them belong cohabit or intend to cohabit as husband and wife.

"Children" means sons and daughters of a male or female whose Sambandham has been registered as a marriage under this Act, whether born before or after such registration. But it shall not include step-sons or step-daughters and in the case of any one whose personal law permits adoption, it shall include adopted sons and daughters.

"Marriage" with its grammatical variations and cognate expressions means, except in section 3, *clause* (*a*), *a Sambandham registered under the provisions of this Act.*

"Tarwad" means and includes all the members of a joint family with community of property governed by the Marumakkatayam or the Aliyasantana Law of Inheritance.

3. *A* marriage between *Hindus* both or either of *whom* follow the Marumakkatayam or *the* Aliyasantana Law *of Inheritance* may be registered under this Act as hereinafter provided *subject to the following conditions :—*

(a) *Neither party must be subject to a personal law of marriage according to which he or she, as the case may be, cannot validly contract a marriage with the other party.*

(b) *The relation of the parties must not be such in respect of consanguinity or affinity that a Sambandham between them is prohibited by any custom or usage applicable to the community to which they or either of them belongs.*

(c) *Neither party must at the date of the notice under section* 5 *have a husband or wife living whose Sambandham with her or him has been registered under this Act and which marriage is not null and void under section* 15.

(d) *The parties must not belong to different communities between the members of which, according to the custom or usage applicable to either community, cohabitation is prohibited.*

(e) *The Sambandham must have been formed in accordance with the customary ceremonies, if any, prevailing in the community to which both or either of them belongs.*

(f) *A party to a Sambandham who is a minor must have obtained the consent of his or her legal guardian to the registration of the Sambandham as a marriage.*

4. The *Local* Government may appoint one or more Registrars under this Act either by name or as holding any office for the time being for any portion of the territory subject to its administration. The officer so appointed shall be called "Registrar of Marriages *under the Malabar Marriage Act, 1896*," and is hereinafter referred to as the "Registrar." The portion of territory for which any such officer is appointed shall be deemed his district.

Registration.

5. When a *Sambandham* is intended to be registered as a marriage under this Act, *both or either* of the parties *shall* give notice in the form (A) to this Act annexed to the Registrar within whose local jurisdiction either of the parties resided at the time when the *Sambandham* was formed *or within whose local jurisdiction it is intended to be formed.*

6. The Registrar shall file all such notices and keep them with the records of his office and shall also forthwith enter a true copy of all such notices fairly into a book *to be for that purpose supplied to him by the Local Government and* to be called "The Marriage Notice Book." Such *book* shall be open at all reasonable times without fee to all persons desirous of inspecting the same.

7. (1) *Every Registrar shall on receiving any such notice forthwith cause a copy thereof to be affixed to a Notice Board in some conspicuous place in his office; and shall then serve or cause to be served at the expense of the party giving such notice a copy thereof on the other party to the Sambandham, if both parties have not joined in giving such notice and on the guardians, if any, of the parties thereto, as also on the managing members of the Tarwads to which they respectively belong.*

(2) *If at any time before registration is effected the party by whom notice was given under section* 5 *signifies in writing to the Registrar that he withdraws such notice the Registrar shall, thereupon, at the expense of the party withdrawing the same communicate the fact of withdrawal to the persons mentioned in sub-section* (1).

8. (1) *Any person entitled to receive a notice under sub-section* (1) *of section* 7, *any member of the Tarwad of either party or any person having any expectancy of succession to the property, if any, of such Tarwad or of either party may within one month from the date of such service of notice object to such registration on the ground that such Sambandham or registration is in contravention of the conditions prescribed in section* 3.

(2) *Such objection shall be in writing signed by the person objecting and shall be presented by the objector or his duly authorized agent to the Registrar who shall file the same in his office. A copy of such objection shall at the expense of the objector be served on the party by whom notice was given under section* 5.

(3) On receipt of a notice of objection under section 7, the Registrar shall not proceed to register the *Sambandham* as a marriage until the expiry of *four* months from the receipt of such notice *unless such notice is in the meantime withdrawn.*

(4) If no *such* objection *be* made under this section and if neither party *withdraws the notice under section* 7, *sub-section* (2), such *Sambandham* may at any time, not being less than one month nor more than six months from the service of the notice under section 7, *be registered as a marriage.*

9. Any person objecting to the intended registration *of a Sambandham* may, *after complying with the provisions of section* 8, file a suit in any civil court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree declaring that such registration would contravene one or more of the conditions prescribed in section 3.

10. The *Judge* before whom such suit is *instituted* shall thereupon give the person *instituting the same* a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within *four* months from the receipt of notice of objection, the *Sambandham* shall not be registered as a marriage *under this Act* till the decision of such court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given *or such suit or appeal has been withdrawn or dismissed for default.*

If such certificate be not lodged within the period prescribed in the last preceding paragraph, or if the *suit by the objector be finally dismissed or withdrawn the Sambandham may* be registered as a marriage.

11. Before *a Sambandham* is registered as a marriage, the parties *thereto* and three witnesses shall, in the presence of the Registrar, sign a declaration in the form (B) to this Act annexed. If either party *is a minor*, the declaration shall also be signed by his or her legal guardian, and

in every case it shall be countersigned by the Registrar.

12. When *such* declaration has been made, the Registrar shall enter a certificate of marriage in a book to be *for that purpose supplied to him by the Local Government* and to be called "The Marriage Certificate Book" in the form (C) to this Act annexed and such certificate shall be signed by the Registrar and countersigned by the parties, three witnesses and, if either party *is a minor*, by his or her guardian *also*.

13. *Subject to such rules as may be prescribed in that behalf by the Local Government, the Registrar may attend at the private residence of the parties or of the guardian of a party who is a minor for the purpose of such declaration and marriage certificate book being signed by them in his presence.*

14. The *Local* Government shall prescribe the fees *payable* for the duties to be discharged by *the Registrar* under his Act.

The Registrar may demand payment of any such fee before the registration of the *Sambandham* or performance of any other duty in respect of which it is payable.

The said marriage certificate book shall, at all reasonable times, be open for inspection. *The Registrar shall furnish certified extracts from the marriage certificate book upon payment of the fee prescribed by the Local Government therefor and such extracts shall be admissible as evidence of the due registration as marriage of the Sambandham therein mentioned.*

15. (1) A marriage shall be null and void *only*—

(*a*) *If either party is subject to a personal law of marriage according to which he or she as the case may be cannot validly contract a marriage with the other.*

(*b*) If a relationship can be traced between the parties through some common ancestor who stands to each of them in a nearer relationship than that of great-great grandfather or great-great grandmother, and by reason of such relationship a *Sambandham* between them *is prohibited by any custom or usage applicable to the community to which they or either of them belong.*

(*c*) If either party has *a* husband or wife living whose *Sambandham* with such party has been registered as a marriage under this Act *and such marriage is not null and void under clauses* (*a*) *and* (*b*) *of sub-section* (1).

(2) *A marriage shall not be invalid on the ground that the Sambandham or registration contravenes any of the grounds mentioned in section* 3 *other than those specified in clauses* (*a*), (*b*) *and* (*c*) *of sub-section* (1).

16. (1) *No marriage under this Act shall be held invalid by reason of any irregularity in the giving of notice under section* 5 *or of any person entitled to be served with copy of notice under section* 7, *not having been so served, or by reason of any irregularity in the publication or service of the copy of such notice or in complying with the provisions of sections* 11 *and* 12.

(2) *But when any person entitled to be served with copy of notice under section* 7 *has not been so served, it shall be competent to him to institute a suit within three months from the date of registration of the Sambandham for cancellation of such registration on all or any of the grounds mentioned in section* 3.

Maintenance.

17. (1) The wife and children shall be entitled to *be maintained by* the husband or father as the case may be. In a *civil suit* by the wife *or children* for maintenance, it shall be open to the husband *or father* to plead all defences open *in such a suit* to a Hindu governed by the ordinary Hindu law.

(2) Nothing herein contained shall affect the right of the wife and children to be maintained *by* the Tarwad.

Guardianship.

18. *When a man's wife and children are minors and are being maintained by him or his Tarwad, he shall, subject to the provision of the "Guardians and Wards Act, 1890," be the guardian of his wife when she is over fourteen years of age and of his children, provided that such guardianship shall not extend to the right and interest of his wife or children in the property of the Tarwad to which his wife and children belong.*

Divorce.

19. A husband *and* wife *or either of them* may present a petition *for dissolution of the marriage in* the court of the District Munsif within the local limits of whose jurisdiction *either the husband or wife or in cases in which one of them alone is petitioner* the respondent has a permanent dwelling or, actually and voluntarily resides or carries on business or personally works for gain *at the time when the petition is presented.*

20. *A copy* of such application *when made by one party alone* shall be served on the other party to the marriage *at the expense of the petitioner.*

21. *Six months after the presentation of a petition by both parties or in cases where the application is made by one party alone* six months after the service of notice *under section* 20, the court shall, unless such application is withdrawn *in the meantime declare in writing the marriage dissolved. Upon such declaration the marriage shall be deemed dissolved from the date of such declaration; and no declaration made under this section shall be held invalid by reason of any irregularity in complying with the provisions of sections* 19, 20 *and* 21.

22. *Where a marriage has been dissolved without the consent of the wife, she shall, notwithstanding such dissolution, be entitled to claim maintenance from the husband so long as she remains a Hindu, continues chaste, and does not form a Sambandham or contract a marriage provided she was not guilty of adultery uncondoned before such dissolution.*

23. *Where a husband following the Marumakkatayam or the Aliyasantana Law of Inheritance dies intestate in respect of his self-acquired or separate property or any portion thereof, one-half of such property or in the event of no member of his Tarwad surviving him the whole of such property, shall devolve in equal shares on his widow and children.*

24. *Where a wife following the Marumakkatayam or the Aliyasantana Law of Inheritance dies intestate in respect of her separate or self-acquired property or any portion thereof such property shall devolve in equal shares upon her children.*

25. *Copies of notices under sub-section* (1) *of section* 7, *notice of withdrawal under sub-section* (2) *of section* 7, *copies of objections under sub-section* (2) *of section* 8, *shall be served through such officer or court as the Local Government from time to time directs in this behalf, and the law in force for the time being for the service of summons on a defendant in a civil suit shall apply to such service.*

FORM (A).

SECTION 5.

Notice of Marriage.

First Schedule, Act III of 1872.

To

————————, a Registrar of Marriages under Act for the District

I hereby give you notice that I intend registering as a marriage under Act the Sambandham between me and the other party herein named and described :—

Name.	Names of tarwad and of the managing member thereof.	Names of the legal guardians (if any).	Rank or profession or calling.	Residence.	Age.	Caste.	The place in which the Sambandham was formed or is intended to be formed.
A.B.							
C.D.							

Witness my hand, this day of 189 .

(Signed)

FORM (B.)

SECTION 11.

Declaration to be made separately by the Bridegroom and by the Bride.

Second Schedule, Act III of 1872.

I, A.B., hereby declare as follows :—

(1) I am a Hindu governed by the Law of Inheritance.

(2) I am years of age.

(3) The registration of my Sambandham with will not contravene any of the conditions prescribed in section 3 of Act .

(4) I consent to the registration as a marriage of the Sambandham between me and C.D. [or, if the party making the declaration is a minor, "(4) my legal guardian consents to the registration as a marriage of the Sambandham between me and C.D."].

(5) I am aware that, if any statement in this declaration is false and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and fine.

(Signed) A.B. (the Bridegroom or Bride).
(„) E.F. (Guardian, if any).
(Countersigned) M.N.,
Registrar of Marriages under Act
for the District of

(Signed) G.H.
(„) I.J. } Three witnesses.
(„) K.L.

FORM (C).

SECTION 12.

Marriage Certificate.

I, E.F., certify that, on the of 189 , appeared before me A.B. and C.D., each of whom in my presence and in the presence of three witnesses, whose names are signed hereunder, made the declarations required by Act and that the Sambandham between them was registered as a marriage under the said Act in my presence. Third Schedule, Act III of 1872.

(Signed) E.F.,
Registrar of Marriages under Act
for the District of

(Signed) A.B.
(„) C.D.
(„) M.N. (Guardian, if any).

(Signed) G.H.
(„) I.J. } Three witnesses.
(„) K.L.

Dated the day of 189 .

(By order.)

FORT ST. GEORGE,
3rd February 1896.

LIONEL DAVIDSON,
Secretary to the Council.

MADRAS: PRINTED AND PUBLISHED BY THE SUPERINTENDENT, GOVERNMENT PRESS.

Not a part of the report

We regret that in the report already submitted we omitted to draw the attention of the Council to a change introduced in section 24.

Under the first Bill the Tarwad was entitled to half the separate or self-acquired property left by a *female* following the Marumakkatayam or Aliyasantana law of inheritance, the other half devolving on her children. This provision has been objected to in the petitions referred to us.

The Commissioners who have signed the report of the Malabar Marriage Commission and Sir T. Muthusami Iyer point out that, according to the evidence before them, the High Court are alleged to have departed from the usage obtaining in Malabar in holding that the self-acquired property of a deceased member lapses to the Tarwad. Under the Aliyasantana law, the Tarwad is *not* entitled to such property in preference to the nearer heirs (I.L.R. VII Mad. 576). This decision also shows that the correctness of the view that in Malabar the Tarwad is entitled to succeed to the self-acquired property of the deceased has been disputed. We may also mention that recently the Subordinate Judge of South Malabar at Palghat has recognized the claim of the children to succeed to the property of their mother as against the Tarwad.

In accordance therefore with the general feeling the Committee we have recognized the claims of the children to succeed to the property of their mother and have omitted the provision that recognizes the claim of the Tarwad.

(Signed) C. SANKARAN NAYAR.
(„) V. BHASHYAM IYENGAR.
(„) J. H. SPRING BRANSON.

Exd. A. Raitt.

ACT OF THE GOVERNMENT OF MADRAS.

The following Act of the Governor of Fort St. George in Council received the assent of His Excellency the Governor on the 14th March 1896, and that of His Excellency the Viceroy and Governor-General on the 27th May 1896, and is hereby promulgated for general information :—

MADRAS ACT No. IV of 1896.

An Act to provide a form of marriage for persons following the Marumakkatayam or the Aliyasantana Law.

Preamble.

WHEREAS it is expedient to enable persons following the Marumakkatayam or the Aliyasantana Law of Inheritance to contract marriages which shall be recognized by courts of law as legal marriages and to provide for the issue of such marriages; It is hereby enacted as follows :—

Title and application.

1. This Act may be called "the Malabar Marriage Act, 1896," and it shall be applicable to all Hindus domiciled in the Presidency of Madras following the Marumakkatayam or the Aliyasantana Law of Inheritance.

Definitions.

2. In this Act unless there is something repugnant in the subject or context:

Sambandham.

"Sambandham" means an alliance between a man and a woman by reason of which they, in accordance with the custom of the community to which they belong or either of them belongs, cohabit or intend to cohabit as husband and wife.

Children.

"Children" means sons and daughters of parents whose Sambandham has been registered as a marriage under this Act, whether born before or after such registration; but shall not include step-sons or step-daughters. In the case of any one whose personal law permits adoption, "children" shall include adopted sons and daughters.

"Marriage"

[PRICE, 1 *anna* 6 *pies*.]

Marriage.

"Marriage" with its grammatical variations and cognate expressions means, except in section 3, clause (*a*), the last word of section 3 clause (*c*), section 15 clause (*a*), and the last word of section 15, clause (*c*), a Sambandham registered under the provisions of this Act.

Tarwad.

"Tarwad" means and includes all the members of a joint family with community of property governed by the Marumakkatayam or the Aliyasantana Law of Inheritance.

Conditions subject to which a Sambandham may be registered as a marriage.

3. A Sambandham between Hindus both or either of whom follow the Marumakkatayam or the Aliyasantana Law of Inheritance may be registered under this Act as hereinafter provided subject to the following conditions:—

(*a*) Neither party must be subject to a personal law of marriage according to which he or she, as the case may be, cannot validly contract a marriage with the other party.

(*b*) The relation of the parties must not be such in respect of consanguinity or affinity that a Sambandham between them is prohibited by any custom or usage applicable to the community to which they belong or either of them belongs.

(*c*) Neither party must at the date of the notice under section 5 have a husband or wife living whose Sambandham with her or him has been registered under this Act and which marriage is not null and void under section 15 or with whom she or he is otherwise legally married.

(*d*) The parties must not belong to different communities between the members of which, according to the custom or usage applicable to either community, cohabitation is prohibited.

(*e*) The Sambandham must have been formed in accordance with the customary ceremonies, if any, prevailing in the community to which they belong or either of them belongs.

(*f*) A party to a Sambandham who is a minor must have obtained the consent of his or her legal guardian to the registration of the Sambandham as a marriage.

Appointment of Marriage Registrars.

4. The Local Government may appoint one or more Registrars under this Act either by name or as holding any office for the time being for any portion of the territory subject to its administration. The officer so appointed shall be called "Registrar of Marriages under the Malabar Marriage Act, 1896," and is hereinafter referred to as the "Registrar." The portion of territory for which any such officer is appointed shall be deemed his district.

Registration.

Notice of intention to register a Sambandham to be given to the Registrar.

5. When it is intended to register a Sambandham as a marriage under this Act, both or either of the parties shall give notice in the form (A) to this Act annexed to the Registrar within whose local jurisdiction either of the parties resided at the time when the Sambandham was formed or within whose local jurisdiction it is intended to form it.

Registrar to file such notices and to maintain the "Marriage Notice Book."

6. The Registrar shall file all such notices and keep them with the records of his office and shall also forthwith enter a true copy of all such notices fairly into a book to be for that purpose supplied to him by the Local Government and to be called "The Marriage Notice Book." Such book shall be open at all reasonable times without fee to all persons desirous of inspecting the same.

7. (1) Every

Copies of notice to be served on interested parties.

7. (1) Every Registrar shall on receiving any such notice forthwith cause a copy thereof to be affixed to a Notice Board in some conspicuous place in his office; and shall then serve or cause to be served at the expense of the party giving such notice a copy thereof on the other party to the Sambandham, if both parties have not joined in giving such notice, on the guardians, if any, of the parties thereto, and on the managing members of the Tarwads or families to which they respectively belong.

Withdrawal of notice.

(2) If at any time before registration is effected the party by whom notice was given under section 5 signifies in writing to the Registrar that he withdraws such notice the Registrar shall, thereupon, at the expense of the party withdrawing the same, communicate the fact of withdrawal to the persons mentioned in sub-section (1).

Persons entitled to object to registration of a Sambandham.

Grounds on which objection may be taken.

8. (1) Any person entitled to receive a notice under sub-section (1) of section 7, any member of the Tarwad or family of either party or any person having any expectancy of succession to the property, if any, of such Tarwad or family of either party may within one month from the date of such service of notice object to such registration on the ground that such Sambandham or registration is in contravention of the conditions prescribed in section 3.

Procedure of Registrar if objection is taken.

(2) Such objection shall be in writing signed by the person objecting and shall be presented by the objector or his duly authorized agent to the Registrar who shall file the same in his office. A copy of such objections shall at the expense of the objector be served on the party by whom notice was given under section 5.

(3) On receipt of a notice of objection under section 7, the Registrar shall not proceed to register the Sambandham as a marriage until the expiry of four months from the receipt of such notice unless such notice is in the meantime withdrawn.

Procedure if no objection is taken.

(4) If no such objection be made under this section and if neither party withdraws the notice under section 7, sub-section (2), such Sambandham may at any time, not being less than one month nor more than six months from the service of the notice under section 7, be registered as a marriage.

Person objecting may file a suit in a Civil Court.

9. Any person objecting to the intended registration of a Sambandham may, after complying with the provisions of section 8, file a suit in a competent civil court for a declaratory decree declaring that such registration would contravene one or more of the conditions prescribed in section 3.

Registration to be delayed pending final disposal of suit, if certificate of institution is lodged with Registrar.

10. The Judge before whom such suit is instituted shall thereupon give the person instituting the same a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within four months from the receipt of notice of objection, the Sambandham shall not be registered as a marriage under this Act till the decision of such court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given or such suit or appeal has been withdrawn or dismissed for default.

If such certificate be not lodged within the period prescribed in the last preceding paragraph, or if the suit by the objector be finally dismissed or withdrawn the Sambandham may be registered as a marriage.

Declaration to be signed before registration.

11. Before a Sambandham is registered as a marriage, the parties thereto and three witnesses shall, in the presence of the Registrar, sign a declaration in the form (B) to this Act annexed. If either party is a minor, the declaration shall also be

be signed by his or her legal guardian, and in every case it shall be countersigned by the Registrar.

Registrar to enter certificate of marriage in "The Marriage Certificate Book."

12. When such declaration has been made, the Registrar shall enter a certificate of marriage in a book to be for that purpose supplied to him by the Local Government and to be called "The Marriage Certificate Book" in the form (C) to this Act annexed and such certificate shall be signed by the Registrar and countersigned by the parties, three witnesses and, if either party is a minor, by his or her guardian also.

Registration at a private residence.

13. Subject to such rules as may be prescribed in that behalf by the Local Government, the Registrar may attend at the private residence of the parties or of the guardian of a party who is a minor for the purpose of such declaration and marriage certificate book being signed by them in his presence.

Fees payable to Registrar.

14. The Local Government shall prescribe the fees payable for the duties to be discharged by the Registrar under this Act.

The Registrar may demand payment of any such fee before the registration of the Sambandham or performance of any other duty in respect of which it is payable.

The said marriage certificate book shall, at all reasonable times, be open for inspection. The Registrar shall furnish certified extracts from the marriage certificate book upon payment of the fee prescribed by the Local Government therefor and such extracts shall be admissible as evidence of the due registration as marriage of the Sambandham therein mentioned.

Marriage when null and void.

15. (1) A marriage shall be null and void only—

(*a*) If either party is subject to a personal law of marriage according to which he or she as the case may be cannot validly contract a marriage with the other.

(*b*) If a relationship can be traced between the parties through some common ancestor who stands to each of them in a nearer relationship than that of great-great grandfather or great-great grandmother, and by reason of such relationship a Sambandham between them is prohibited by any custom or usage applicable to the community to which they belong or either of them belongs.

(*c*) If either party has a husband or wife living whose Sambandham with such party has been registered as a marriage under this Act and such marriage is not null and void under clauses (*a*) and (*b*) of sub-section (1) or with whom she or he has been otherwise legally married.

(2) A marriage shall not be invalid on the ground that the Sambandham or registration contravenes any of the grounds mentioned in section 3 other than those specified in clauses (*a*), (*b*) and (*c*) of sub-section (1).

Marriage not invalid by reason of irregularity in procedure.

16. (1) No marriage under this Act shall be held invalid by reason of any irregularity in the giving of notice under section 5 or of failure to give notice under section 7 to any person entitled to receive it, or by reason of any irregularity in the publication or service of the copy of such notice or in complying with the provisions of sections 5, 11 and 12.

(2) But when any person entitled to be served with copy of notice under section 7 has not been so served, it shall be competent to him to institute a suit within three months from the date of registration of the Sambandham for cancellation of such registration on all or any of the grounds mentioned in section 3.

Maintenance.

Maintenance.

17. (1) The wife and children shall be entitled to be maintained by the husband or father as the case may be. In a civil suit by the wife or children for maintenance, it shall be open to the husband or father to plead all defences open in such a suit to a Hindu governed by the ordinary Hindu law. Maintenance of wife and children.

(2) Nothing herein contained shall affect the right of the wife and children to be maintained by the Tarwad.

Guardianship.

18. When a man's wife and children are minors maintained by him or his Tarwad, he shall, subject to the provision of the "Guardians and Wards Act, 1890," be the guardian of his wife when she is over fourteen years of age and of his children, provided that such guardianship shall not extend to the right and interest of his wife or children in the property of the Tarwad to which his wife and children belong. Guardianship of minor wife and children.

Divorce.

19. A husband and wife or either of them may present a petition for dissolution of the marriage in the court of the District Munsif within the local limits of whose jurisdiction either the husband or wife or in cases in which one of them alone is petitioner the respondent has a permanent dwelling or actually and voluntarily resides or carries on business or personally works for gain at the time when the petition is presented. Petition for dissolution of marriage.

20. A copy of such application when made by one party alone shall be served on the other party to the marriage at the expense of the petitioner. Notice to be given to other party, if petition is not joint.

21. Six months after the presentation of a petition by both parties or in cases where the application is made by one party alone six months after the service of notice under section 20, the court shall, on the motion of the applicants or applicant, declare in writing the marriage dissolved; provided that such motion is made within seven days after the expiration of the six months or if the court is closed then that such motion is made on the day on which the court is re-opened. Upon such declaration the marriage shall be deemed dissolved from the date of such declaration; and no declaration made under this section shall be held invalid by reason of any irregularity in complying with the provisions of sections 19, 20 and 21. If no such motion is made within the time hereinbefore prescribed the court shall dismiss the petition. Court to declare marriage dissolved on motion made within a specified period.

22. Where a marriage has been dissolved without the consent of the wife, she shall, notwithstanding such dissolution, be entitled to claim maintenance from the husband so long as she remains a Hindu, continues chaste, and does not form a Sambandham or contract a marriage provided that she was not guilty of adultery uncondoned before such dissolution. Maintenance when claimable by divorced wife.

23. Where a man following the Marumakkatayam or the Aliyasantana Law of Inheritance dies intestate in respect of his self-acquired or separate property or any portion thereof, one-half of such property or in the event of no member of his Tarwad surviving him the whole of such property shall devolve on his widow if he leaves no children, or on his children in equal shares if he leaves no widow, or on his widow and children in equal shares if he leaves both widow and children. Succession to separate property of a married man dying intestate.

24. Where

Succession to separate property of a married woman dying intestate.

24. Where a woman following the Marumakkatayam or the Aliyasantana Law of Inheritance dies intestate in respect of her separate or self-acquired property or any portion thereof one-half of such property shall devolve in equal shares upon her children and, in the event of no member of her Tarwad surviving her, the whole of such property shall devolve on her husband.

Service of notices under this Act.

25. Copies of notices under sub-section (1) of section 7, notice of withdrawal under sub-section (2) of section 7, copies of objections under sub-section (2) of section 8, shall be served through such officer or court as the Local Government may direct in this behalf, and the law in force for the time being for the service of summons on a defendant in a civil suit shall apply to such service.

FORM (A).

SECTION 5.

Notice of Marriage.

To

————————, a Registrar of Marriages under Act for the District of .

I hereby give you notice that I intend registering as a marriage under Act the Sambandham between me and the other party herein named and described :—

Name.	Names of tarwad and of the managing member thereof.	Names of the legal guardians (if any).	Rank or profession or calling.	Residence.	Age.	Caste.	The place in which the Sambandham was formed or is intended to be formed.
A.B.							
C.D.							

Witness my hand, this day of 189 .

(Signed)

FORM (B).

SECTION 11.

Declaration to be made separately by the Bridegroom and by the Bride.

I, A.B., hereby declare as follows :—

(1) I am a Hindu governed by the Law of Inheritance.

(2) I am years of age.

(3) The registration of my Sambandham with will not contravene any of the conditions prescribed in section 3 of Act .

(4) I consent

(4) I consent to the registration as a marriage of the Sambandham between me and C.D. [or, if the party making the declaration is a minor, " (4) my legal guardian consents to the registration as a marriage of the Sambandham between me and C.D."].

(5) I am aware that, if any statement in this declaration is false and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and fine.

(Signed) A.B. (the Bridegroom or Bride).
(") E.F. (Guardian, if any).

(Signed) G.H.
(") I.J. } Three witnesses.
(") K.L.

(Countersigned) M.N.,
Registrar of Marriages under Act
for the District of

FORM (C).

SECTION 12.

Marriage Certificate.

I, E.F., certify that, on the of 189 , appeared before me A.B. and C.D., each of whom in my presence and in the presence of three witnesses, whose names are signed hereunder, made the declarations required by Act and that the Sambandham between them was registered as a marriage under the said Act in my presence.

(Signed) E.F.,
Registrar of Marriages under Act
for the District of

(Signed) A.B.
(") C.D.
(") M.N. (Guardian, if any).

(Signed) G.H.
(") I.J. } Three witnesses.
(") K.L.

Dated the day of 189 .

(By order.)

LIONEL DAVIDSON,
Secretary to the Council.

MADRAS: PRINTED AND PUBLISHED BY THE SUPERINTENDENT, GOVERNMENT PRESS.

Confidential.

Re Order No. 62, Legislative, dated 2nd July 1896 and the Malabar Marriage Act. IV of 1896.

Opinion.

1. The words "Section 7" in Section 8 (3) are obviously wrong. The reference should be to Section 8 itself, and, therefore, for "Section 7" should be read "this section".

2. I am unable to see how the definition of marriage in Section 2 is in conflict with the main purpose of the Act. The definition is "Marriage ... means ... a Sambandham registered under the provisions of this Act." In other words a registered Sambandham is a "marriage," the parties thereto are "married" persons, referred to in the Act itself as "husband" and "wife" respectively.

The title and Preamble of the Act show clearly that valid marriages "which shall be recognized by Courts of law as legal marriages" ~~was one of~~ formed one of the objects of the Act. Section 4 empowers Government to appoint "Marriage Registrars," and Section 14 declares that extracts furnished by the Registrar from the marriage certificate book "shall be admissible as evidence of the due registration as marriage of the Sambandham therein mentioned". The terms "husband" and "wife" are used in the Act whenever the parties to a registered Sambandham are

referred to. The Act provides for dissolution of mar-riage, and a form of "Marriage certificate". It recognises that a "wife" may be guilty of "adultery", and speaks of her as a "widow" when her "husband" is dead. A registered Sambandham, until dissolved, is a bar to a second marriage during the life time of the parties. Under these circumstances I fail to see how "the statutory marriage" differs from "marriage in the ordinary sense of the word", or how the criminal law is inapplicable to the status of husband and wife created by the Act.

The Brahmo Marriage Act, III of 1872, specially declares what shall constitute bigamy, and that the offender shall be punished under the Indian Penal Code. The Parsi Marriage and Divorce Act XV of 1865 also declares that those who commit bigamy shall be punished under the Code. The absence of similar provisions in the Malabar Marriage Act, cannot I think affect the question of the applicability of the Indian Penal Code to offences committed with or in respect of women married under this Act, and to bigamy. The Indian Christian Marriage Act XV of 1872 is not defective, because it contains no reference to the criminal law regarding offences connected with the marriage relations.

3. The meaning of Section 16 is explained in the Report of the Select Committee on the Bill. Section 3 specifies the conditions subject to which a Sambandham may be registered as a

marriage. The Act requires that notice of intention to register shall be served on parties interested (Section 7) and allows such parties to object to the registration if they do so within one month from the date of service upon them of such notice (Section 8). In the absence of any objection, the Sambandham may be registered at any time not being less than one month nor more than six months from the service of the notice (Section 8 (4)) Upon registration the Sambandham becomes a valid marriage, unless it is absolutely null and void on the three grounds specified, viz

(a). that the parties thereto could not validly contract a marriage according to the personal law of marriage applicable to them. [Sections 3 (a) and 15 (a)]

(b) that the parties are related within the prohibited degrees. [Sections 3 (b) and 15 (b)]; and

(c) that either party has a husband or wife, as the case may be, still living. [Sections 3 (c) and 15 (c)]:

The other grounds on which objection to registration may be based, and were irregularity of procedure with regard to notice, do not affect the validity of a registered marriage. [Sections 15 (2) and 16 (1)]; but, where notice has not been served upon a person entitled to receive such notice, and he has, therefore, not had any opportunity of objecting to the registration, Section 16 (2) allows him to file a suit for the cancellation of such registration on any of the grounds mentioned in Section 3 provided he does so

within three months from the date of the registration. If the suit be based on any of the three grounds which render a marriage absolutely null and void, no difficulty can arise. If it be based on any of the other grounds mentioned in Section 3 (d) (e) and (f), and the defendants plead that under Section 15 (2) the marriage is not invalid and the Court cannot practically declare that it is by directing the registration thereof to be cancelled, the answer would be that the plaintiff had no opportunity of objecting to the registration, that he is entitled to file the suit within the prescribed time, and, having done so, the Court is bound to enquire into the validity of his objection, and to direct the cancellation of the registration if the objection is well founded. No doubt the practical result of such an order would be that the Sambandham would cease to be registered, and therefore would not be a marriage: but by permitting such a suit to be filed, the Legislature empower the Court to decide it. Section 15 deals with the validity of a marriage, Section 16 (2) preserves for a time the right to object to registration possessed by a party interested who has had no opportunity of exercising that right. I do not think that any difficulty will arise in the construction and working of these sections.

4. To amend the clerical error in Section 8, a short Act might be passed, but it is not absolutely necessary, for the mistake is so obvious that the Courts would rectify it whenever they had to apply the section. As to the other suggested amendments I think the working of the Act might be allowed to proceed without them in order to see if the Courts experience any real difficulty in construing the Act. If, however, Government should think that amendments should be made at once, the Honorable Mr. Sankara Nair might be asked to introduce an amending Act.

J. H. Spring Branson.
Advocate General

Madras 10th July 1896.

1896
Leg.
No. 1
166

CURRENT No. 166

Madras 10th July 1896

From

The Honorable Mr. J. H. Spring Branson
Advocate General

To

The Honorable Mr. J. F. Price C.S.I.
Chief Secretary to Government
with the Governor
Stonehouse Hill.

Sir,

With reference to G.O. No. 62, Legislative, dated the 2nd instant, I have the honor to forward herewith my opinion in regard to certain alleged defects in the Malabar Marriage Act, IV of 1896.

I have the honor to be
Sir
Your most obedient Servant

J. H. Spring Branson.
Advocate General.

CURRENT No. 166.

1896.

Legislative Dept

From

The Advocate General

Madras

To

The Chief Secretary to Govt:

Ootacamund.

Dated 10th July

CHIEF SECRETARY
11 JUL 1896
GOVERNMENT OF MADRAS

~~Confid^l Clerk~~

~~This wants supplementing by~~

a ~~copy of the~~

Subject.

Malabar Marriage Act IV of 1896. Forwarding opinion in regard to certain alleged defects in the

. . . .

C 22/7

D/4 1,000—20-2-96.

Malabar Marriage Act.

REVENUE DEPARTMENT.

No. N.E. & Circ 166

From

Dated 10 - 7. 1896.

FOR ORDERS.

This current is the Advocate-General's reply to a reference based on Mr. Justice Benson's criticisms of the Malabar Marriage Act. (G.O. 62 Legve dy. 2.7.96)

2. As regards the clerical error in section 8(3) - reg. "section 7" for "this section", the Advocate-General is of opinion that the Courts would rectify so obvious a mistake.

3. With refce to the graver objection that marriage under the Act will not be recognized as marriage in the ordinary sense of the term, the Advocate-General urges that the ~~pr~~ title & preamble of the Act remove this objection. The rest of his argument is not easy to follow; the sections* to which he refers can import no meaning into the words "marriage", "husband" & "wife" except that conve... in the definition of marriage...

(and c...

I should be obliged if my Hon. Colleagues would let me see their opinions on this.

A.E.H
1.8.96

I don't profess to be a lawyer, but so far as I can judge the Adv. Genl. has the best of the argument. It would no doubt be the best plan to get Bashyam Iyengar's opinion - Perhaps we might send the G.O. (with Mr. Benson's letter) and the Adv. Genl's reply to Sankaran Nair & ask him (do.) what he thinks. We don't need consult Bashyam Iyengar.

[initials]
3/8/96

I think the Adv. Gen. is right. Bashyam Iyengar wrote to me this, some time ago. The other day I heard from one or two quarters that a serious doubt was felt as to whether a marriage under the Mal. a bar Marriage Act would be recognized as a marriage under the Indian Penal Code, & ✗ the doubt was altogether unintelligible to me. There is no special definition of the word "marriage", in the I.P.C. & the ✗

✗ Except sec. 22 which mentions "adultery"

[initials]

section 2. The other Marriage Acts which he mentions differ in the one essential point from the Malabar Marriage Act for they contain no* similar definition of "marriage", & the words consequently carries the ordinary signification.- It is questionable whether the title & preamble can over-rule the plain meaning of the body of an act; the casual reference to adultery, & the fact that a registered Sambandham is a bar to a second marriage are, I submit, of no importance.- So long as the definition in Sec. 2 is retained it wld. seem that "marriage" under the Act is a special state differing from marriage in the ordinary sense of the word, & not subject to the provisions of the civil & criminal law in the same way. The Hon'ble Bhashyam Aiyangar's opinion in a case of this sort wld. probably be more valuable than the Advocate General's; it wld. certainly be desirable to obtain it, but it is difficult to say how this could be done without giving offence to the latter. Even a confidential & unofficial letter wld. probably leak [illegible] the long run.

FOR ORDERS.

*[The defn. in Act XV of 1865 (sec. 2) & uses the word "marriage"]
D

I believe that it is a rule of interpretation that they cannot.
WS

please see the definition which [illegible]

I don't think that question arises. It is not the plain meaning of the act that a registered Sambandham is not a marriage in the ordinary sense of the term

JG

---

* Malabar Act constitutes a Sambandham when registered a marriage, & if I remember right the man & woman whose Sambandham is registered is throughout the act referred to & denoted as "husband & wife"

J.G.
5/8/96

Yes, being "special expressions" they bear the "limited sense" referred to by the defn. of "marriage"

In view of the above, I should be inclined to leave the matter alone.

A.T.H.

9.8.96

Eno 29

4. The third point raised is, I submit, satisfactorily met by the Advocate General. Provided that ~~a Court can pass a decree~~ the power to institute a suit for a particular purpose implies jurisdiction on the part of the Court to pass a decree accordingly, there is no difficulty about the apparent contradiction between sections 15 (2) + 16 (2). The former declares that a marriage shall not be invalid on certain grounds, whereas the latter provides a procedure by which a marriage may practically be declared invalid on those or other grounds.

[initials] 2/7/86 [initials] 18.7.86

Malabar Marriage Act.

~~H.E. to see~~

Recirculated to H.E. the Governor with the notes recorded by H.M.'s

D.D. 6-8-96

12/8/96

Hon'ble W. Bliss CIE

Resubmitted to the Hon'ble W. Bliss for perusal of the notes recorded by the Hon'ble W. Grose & H.E. the Gov.

As the Hon'ble W. Grose has heard from the Hon'ble Bhashyam Aiyangar, perhaps the papers may be recorded.

D.D. 11-8-96

Yes - & steps taken to bring the Act into force 12/8/96

WB 13/8/96

C. 22/7 R 5/8

C. 8/8 R 11/8.

C 13/8 R 14/8

Legve
~~REVENUE~~ DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read

G.O. No 62 Legve
2. 7. 96

C. 166.

G.O. No 65 dt 17 Augt 1896

Recorded with the remark that the Public Dept. should take immediate steps towards giving effect to the ~~Act~~ Malabar Marriage Act.

fas.
LD 15. 8. 96

JO 17/8/96

The Adv. Genl. — G.O.
The Public Dept. P.O. } despd 17/

E

C.

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